

ARTICLE 5. SUBDIVISION STANDARDS

§5.1. General

§5.1.1. Applicability

The requirements of this article shall apply to all development required to submit site plans or plats, unless expressly exempted by the language of the sections below. Prior to approval of a final plat for the subdivision of land, the applicant shall have installed improvements or guaranteed their installation in accordance with the requirements of this article. No services or utilities shall be extended or furnished to any subdivision or lot until the improvements required by this article have been completed or their installation guaranteed.

§5.1.2. Suitability of Land

Land which has been determined by the Board of Commissioners on the basis of engineering or other expert surveys to pose an ascertainable danger to life or property by reason of its unsuitability for the use proposed shall not be platted for that purpose, unless and until the subdivider has taken the necessary measures to correct said conditions and to eliminate said dangers. The burden of proof for determining that such danger in a subdivision does not exist shall rest entirely with the subdivider.

§5.1.3. Mitigation

The County may require on- and off-site improvements to mitigate the impacts of the proposed development.

§5.1.4. Clearing and Grading

- A. All property required to be dedicated, reserved or otherwise set aside and identified on the approved site plan or preliminary plat shall be surveyed by a registered surveyor, staked and appropriately marked and protected prior to beginning clearing and grading work.
- B. No site alteration (e.g.; grading, clearing, tree cutting) shall occur prior to the approval of a zoning compliance letter. All clearing and grading work shall be in conformance with the approved site plan or preliminary plat. (See also erosion control requirements of §3.8 and tree protection requirements of §3.4.11.D.)

§5.1.5. Floodplains

Base floodplain elevation data shall be provided for all development proposals that are impacted by a floodplain as required by §9.16, Floodplain Development Permit.

§5.1.6. Reserve Strips

The reservation of private property strips of too narrow a depth to permit development as a means of controlling access to public ways shall not be permitted.

§5.1.7. Compliance

Prior to any land-disturbing activity, the applicant shall comply with all Federal, State, and local permitting requirements.

Mandatory Planned Unit Development**§5.1.8. Mandatory Planned Unit Development**

All subdivisions with 50 or more dwelling units or lots shall be processed as a planned development pursuant to the requirements of §2.4.9.

§5.2. Surveys and Monuments

The Standards of Practice for Land Surveying as adopted by the N.C. State Board of Registration for Professional Engineers and Land Surveyors, under the provisions of Title 21 of the North Carolina Administrative Code, Chapter 56 (21 NCAC 56), shall apply when conducting surveys for subdivisions; to determine the accuracy for surveys and placement of monuments, control corners, markers, and property corner ties; to determine the location, design, and material of markers, control corners, and property corner ties; and to determine other standards and procedures governing the practice of land surveying for subdivisions.

§5.3. Easements

- A. Stormwater drainage and utility easements shall be provided along each side of all side and rear lot lines for water, sanitary sewer, electricity, gas and communications improvements and in other locations and widths as required by the provider. The minimum width of all such easements shall be ten feet.
- B. Where a subdivision is traversed by a water course, drainageway, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way, conforming substantially with the lines of such watercourses, and of such further width or construction, or both, as will be adequate for the purpose. The minimum width of all such easements shall be 20 feet.
- C. Easements for other purposes, including but not limited to trails and greenways, scenic views, historic preservation, cemetery access, and unique natural sites, shall be designed for reservation or dedication as appropriate.
- D. All site plans and plats shall exhibit standard easement notes stating the type and purpose of the easement along with a list of prohibited uses/activities within the easement.

§5.4. Roads**§5.4.1. General**

- A. Roads within Lincoln County are intended for multi-purpose use, as follows:
 - 1. To carry motor vehicle traffic, bicycles, etc.;
 - 2. To provide a safe and convenient passageway for pedestrian traffic; and
 - 3. To serve as an important link in the County's drainage system.
- B. All roads shall be constructed in conformance with §3.1, Lincoln County Construction Standards.

§5.4.2. Relationship of Roads to Topography

- A. Roads shall be designed to relate appropriately to the topography of a site. In particular, roads shall be designed to facilitate the stormwater drainage requirements specified in §5.7.2 and, subject to the design requirements relating to maximum grades set forth in paragraph B below, road grades shall conform as closely as practicable to the original topography.
- B. The maximum grade for road construction shall meet design requirements of NCDOT.

§5.4.3. Road Layout

- A. The arrangement, character, extent, width, grade, and location of all roads must be in keeping with existing and proposed transportation patterns, topographical and other natural features, public convenience and safety, and proposed uses of lands to be served by such roads.
- B. The proposed road layout within a subdivision must be coordinated with the existing and proposed road network within the surrounding area (as established on adopted thoroughfare plans and the road layout within existing and approved subdivisions in the general area), including the extension to property boundaries and interconnection of roads between adjacent properties where appropriate to the development of a local road network.

Commentary: *A network of extended and interconnected local roads is intended to provide each parcel in the general area the safe, convenient, and efficient means of access that will ensure the orderly development of the parcel and the area, provide a wholesome community environment, ensure the effective and efficient provision of emergency and other public services, and help to avoid degradation of existing roads and highways.*

§5.4.4. Road Connectivity**A. Purpose**

An interconnected road system is necessary in order to promote orderly and safe development by ensuring that roads function in an interdependent manner, provide adequate access for emergency and service vehicles, enhance access by ensuring connected transportation routes, and provide continuous and comprehensible traffic routes.

B. Connectivity Defined

Connectivity shall be defined by the ratio of links to nodes in any subdivision.

1. The connectivity ratio shall be the number of road links divided by the number of nodes or end links, including cul-de-sac heads.
2. A link shall be any portion of a road, other than an alley, defined by a node at either end. Stub-outs to adjacent property shall be considered links. For the purpose of determining the number of links in a development, boulevards, median-divided roadways, and divided entrances shall be treated the same as conventional two-way roadways.

Road Connectivity

3. A node shall be the terminus of a road or the intersection of two or more roads.
 - (a) Any curve or bend of a road that exceeds 75 degrees shall receive credit as a node. Any curve or bend of a road that does not exceed 75 degrees shall not be considered a node.
 - (b) A divided entrance shall only count once.

C. Internal Connectivity Ratio

1. In all districts except in the R-R district, the road network for any subdivision with internal roads or access to any public right-of-way shall achieve a connectivity ratio of not less than 1.40, measured within the subdivision.
2. Within the R-R district, the road network for any subdivision with internal roads or access to any public right-of-way shall achieve a connectivity ratio of not less than 1.20, measured within the subdivision.
3. Road links and nodes along a collector or arterial road providing access to a proposed subdivision shall not be considered in computing the connectivity ratio.

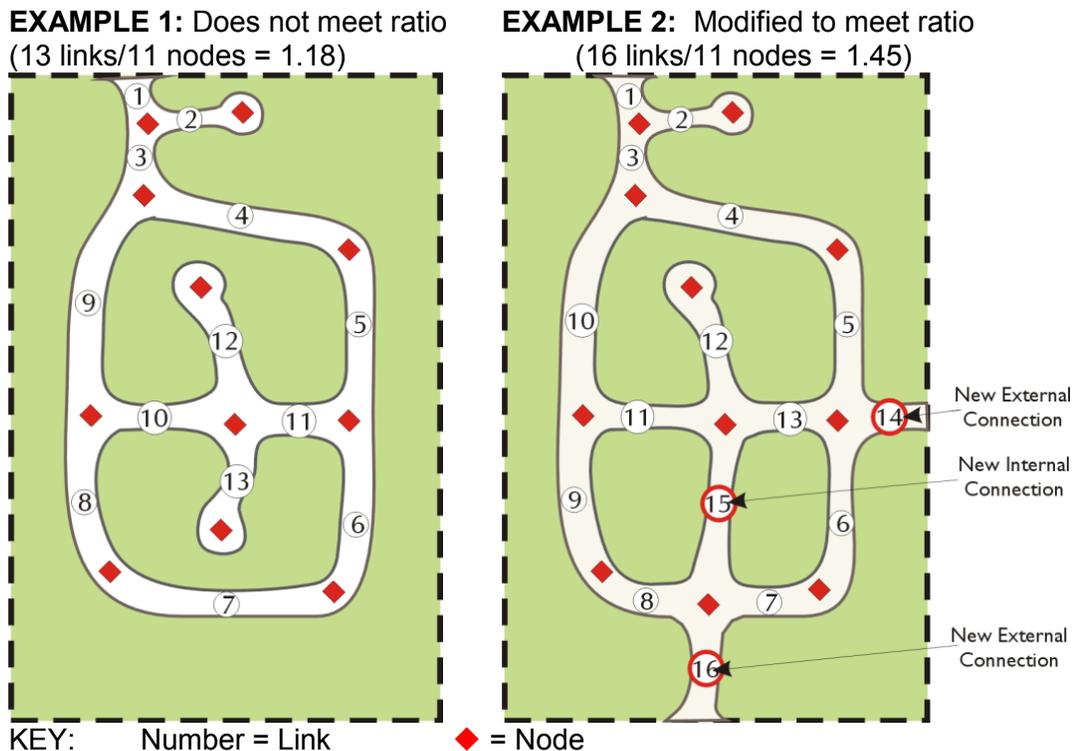


Figure 78. Internal Connectivity Ratio

Commentary: The internal connectivity ratio in this subsection C provides a formula that ensures a consistent number of links within a development. But, one could design a subdivision with a sufficient number of internal connections to meet the ratio standard and only one external connection; hence the "double standard". See External Access Required in D, below.

D. External and Internal Access Required

In order to accommodate emergency and service vehicles, the following standards shall apply:

1. Any residential subdivision of greater than 30 lots shall be provided with separate and approved fire apparatus access roads as defined in the latest edition of the North Carolina State Building Code Fire Prevention Code. Within a residential subdivision, no more than 30 lots shall be located on any road that lacks emergency access from two directions.
2. Any residential subdivision of greater than 50 lots shall include a minimum of two access points.
3. Residential subdivisions of 250 or more lots shall provide three separate access points. Where three or more access points are required, the Board of Commissioners may waive the requirement for immediate construction of more than two access points, provided that subdivision phasing and design illustrates the additional required connections. For those subdivisions large enough to require a third access, a stub-out road may be credited as a required access if the two functioning access roads are both connected to a collector road.
4. A waiver (see §9.6.9.F) of these standards may be allowed by the Board of Commissioners during approval of the preliminary subdivision plat only in extreme cases where limited frontage, natural features (slope, topography), or similar circumstances preclude the required connections and there is no substantial impact noted regarding emergency service delivery.

§5.4.5. Road Improvements

All subdivision lots shall abut on a public right-of-way except where allowed in §5.4.6.

A. Required Improvements

1. The applicant shall be responsible for the cost and installation of the applicable standard road width and pavement design requirements. The applicant shall also provide additional pavement surfaces for turning lanes in accordance with the NCDOT requirements. A written maintenance agreement with provisions for maintenance until such time as road improvements are accepted for State maintenance shall be included with the final plat and recorded with the Lincoln County Register of Deeds Office.
2. The applicant shall be responsible for right-of-way dedication and improvements. The improvements to be installed include: the thoroughfare grading, sub-base and surface paving materials and the remaining minimum standards applicable to arterial, collector or local roads. Such improvements shall extend to the outer perimeter boundaries of a development for any development where any of the following conditions occur:
 - (a) Thoroughfare improvements would provide necessary access to the development or adjoining properties;

Private Roads

- (b) The improvement would be an extension of an already existing section of thoroughfare roadway; or
- (c) Traffic from the development is predominantly from nonresidential activities and the development would otherwise gain access through a residential area.

B. County Participation Provisions

The cost of utilities, storm sewers and other improvements that are required by the County to be larger than would normally be needed to serve the proposed addition may be cost-shared between the developer and the County at the discretion of the Board of Commissioners.

§5.4.6. Private Roads

- A. All private roads shall be constructed according to the County's public right-of-way construction standards. Unless the recorded plat of a subdivision clearly indicates a road to be private, the recording of such plat shall constitute an offer of dedication of such roads. The County shall have the discretion to require a public right-of-way connection for safety or access purposes.
- B. The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchasers of a newly-created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the maintenance responsibilities for the road, in accordance with the requirements set forth in G.S. § 136-102.6.
- C. All private roads shall be maintained by a homeowners association established in accordance with the requirements of §5.11.
- D. Where private roads are later made public through dedication to NCDOT, such roads must be brought up to public construction and maintenance standards, prior to their acceptance by the State.

Commentary: *Except in very large developments with thousands of units and professional managers, and in some very expensive smaller developments, private roads tend to be inadequately maintained. Owners' associations typically do not budget adequately for annual maintenance and do not create sufficient sinking funds for major resurfacing at periodic intervals. Residents of such developments, despite disclaimers placed in land records, tend to blame public officials and to expect them to do something about it. It is unlikely that NCDOT will be willing to take over substandard, unmaintained roads, leaving the County in an unfortunate position with affected residents and taxpayers. So, the above standards discourage use of private roads.*

§5.4.7. Thoroughfare Dedication

- A. Whenever a parcel of land included within any proposed development plan embraces any part of a thoroughfare shown on the County Transportation Plan, such part of such proposed public way shall be platted and dedicated in the location and width indicated on the plans. It is the responsibility of the applicant to take future roadway plans of the County and the NCDOT into account when laying out a development plan.

- B. Developments which embrace only one side of an existing or planned thoroughfare right-of-way will only be required to plat and dedicate additional right-of-way for that portion of roadway with which the development has frontage. Such dedications shall be in conformance with County standards and shall be measured from the right-of-way centerline.

§5.4.8. Road Classification

In all new subdivisions, roads shall be classified in accordance with §5.4.9.

- A. The classification shall be based upon the projected volume of traffic to be carried by the road, stated in terms of the number of trips per day or during the peak hour of the day;
- B. The number of dwelling units to be served by the road may be used as a useful indicator of the number of trips but is not conclusive; and
- C. Whenever a subdivision road continues on an existing road or it is expected that a subdivision road will be continued beyond the subdivision at some future time, the classification of the road will be based upon the road in its entirety, both within and outside of the subdivision.

§5.4.9. Road Types

A. Principal Arterial Road (Freeway)

Principal arterial roads connect to a network of continuous routes that serve statewide or interstate travel.

B. Minor Arterial Road (Boulevard)

Minor arterial roads connect to a thoroughfare network that links cities, larger towns, and major traffic generators. Such roads generally serve intrastate and inter-county travel.

C. Major Collector Road (Avenue)

Major collector roads serve as a connector road between local roads and the thoroughfare system. Such roads generally serve intra-county access to schools, shipping points, county parks, significant mining and agricultural areas.

D. Minor Collector Road (Road)

Minor collector roads collect traffic from local roads and bring all developed areas within a reasonable distance of a major collector road. A minor collector also provides services to smaller communities, and links important traffic generators with less populated areas.

E. Local Road

1. Local roads are generally cul-de-sacs, loop roads less than 2,000 feet in length, or roads less than one mile in length that do not connect thoroughfares or serve major traffic generators and do not collect traffic from more than one hundred dwelling units.
2. Residential collector roads are also classified as local roads when they serve as the connecting road system between local residential roads and the thoroughfare system.

Road Widths

F. Alley

A public vehicular way providing service access along rear or side property lines of lots which are also served by one of the other listed road types.

§5.4.10. Road Widths

- A. Road widths and cross-sections shall be subject to the approval of the County and NCDOT.
- B. Subdivisions along existing roads of inadequate or undedicated right-of-way shall provide additional right-of-way to meet the minimum widths specified by the County’s Construction Standards. The entire right-of-way shall be provided where any part of a new subdivision is on both sides of an existing road, and one-half the required right-of-way, measured from the center line of the existing road, shall be provided where a new subdivision is located on one side of an existing road.

§5.4.11. Cul-de-sac Roads

- A. Cul-de-sac roads shall be used only when it is determined by the Board of Commissioners that extension of the road to an adjacent property is impractical or unnecessary.

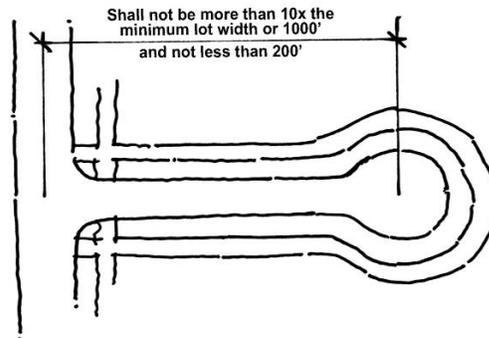


Figure 79. Cul-de-sac Roads

Alternative turnaround designs on residential roads serving six dwelling units or less may be considered on a case-by-case basis. Alternative designs must readily accommodate emergency vehicles and other necessary truck traffic.

- B. Cul-de-sac roads shall not be less than 200 feet or longer than ten times the minimum lot width or 1000 feet, whichever is less, and shall be terminated by a circular road having a minimum diameter as determined by NCDOT. The length of cul-de-sac roads shall be measured from the center point of its turnaround, along the centerline of its right-of-way and that of any intervening roads, to the centerline of the right-of-way of the nearest through road.

§5.4.12. Half Roads

The dedication of half roads at the perimeter of a new subdivision is prohibited. When a half road exists along the perimeter of an adjoining subdivision, the remaining half must be provided by the proposed subdivision.

§5.4.13. Road Signs

The subdivider shall either provide and erect road name signs at all road intersections within the subdivision in accordance with all NCDOT standards or be required to reimburse Lincoln County for providing said signs. Any such fee shall be paid to the Director prior to final plat approval.

§5.4.14. Road Names

Road names shall be subject to the approval of the Board of Commissioners. New road names shall not duplicate or be similar to existing road names in Lincoln County. Existing road names, however, shall be protected where appropriate in accordance with the Lincoln County Addressing Ordinance.

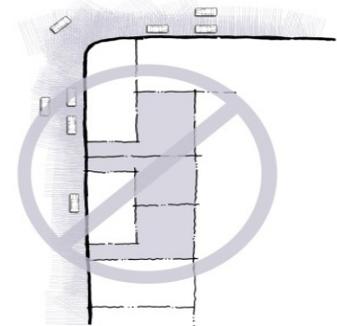
§5.5. Sidewalks

- A. In order to enhance pedestrian safety and mobility, sidewalks a minimum of five feet in width shall be required on one side of all roads, provided however that sidewalks shall not be required on the following roadways:
 1. In residential developments with minimum lot sizes one acre or greater, except where an existing school, park, recreation and open space, trail or greenway lies within ¼-mile of the boundaries of the proposed subdivision, in which case a safe pedestrian connection between the subdivision and the off-site facility is required;
 2. Residential roads serving less than or equal to ten dwelling units, provided that:
 - (a) Corner lots that have frontage on both a residential road and a connective or loop road shall not be included in determining the number of dwelling units served by the road; and
 - (b) Road stubs temporarily serving ten lots or less shall provide sidewalks on one side of the road.
- B. Handicapped access ramps shall be provided at all intersections where curb and gutter are provided, and where sidewalks and/or greenway trails intersect any road.

Lots

§5.6. Lots and Blocks**§5.6.1. Lots**

- A. Every lot shall have a minimum of 35 feet of frontage on public right-of-ways or private right-of-ways pursuant to §5.4.6, except where otherwise specifically allowed by the dimensional standards of §2.4, and shall contain the minimum required lot width of the applicable zoning district within 100 feet of the road right-of-way adjoining the front yard, except for lots created pursuant to §9.6.6.A.3 and lots in family subdivisions as authorized below.
1. Lots in a family subdivision created pursuant to §9.6.10, Family Subdivisions, need not have frontage on public right-of-ways, and all lots must meet or exceed the minimum lot size of the Lincoln County Water Supply Watershed Protection Ordinance.
 2. Lots in family subdivisions must either comply with subsection A, above, or have a minimum of 35 feet of frontage on either a newly created private road easement that has a minimum width of 45 feet or an easement that existed prior to May 14, 1996, provided the pre-existing easement has a minimum private road easement width of 20 feet. Such easement shall provide access to a NCDOT maintained road. Irrespective of this minimum width, the road easement shall be of appropriate width to accommodate the placement of utilities.
 3. In no instance may one unpaved private road easement intersect with another unpaved private road easement.
- B. Lot sites, shapes, and locations shall be made with due regard to topographic conditions, contemplated uses, and the surrounding areas.
- C. Through lots shall be avoided, except when lots adjoin a thoroughfare and access is desirable by a road of residential scale, and discouraged or prohibited on the thoroughfare.
- D. Side lot lines shall be substantially at right angles or radial to road lines.
- E. Panhandle lots may be created in any zone if all of the following requirements are met:
1. No panhandle lot may be adjacent to more than one panhandle lot;
 2. The access portion of the lot shall be at least 35 feet in width;
 3. The depth of the panhandle shall not exceed 100 feet as measured from the adjacent public or private road;

**Figure 80. Panhandle Lots**

4. The panhandle portion of the lot shall not be included in calculating lot size; and
5. Panhandle lots may not be further subdivided following initial subdivision approval.

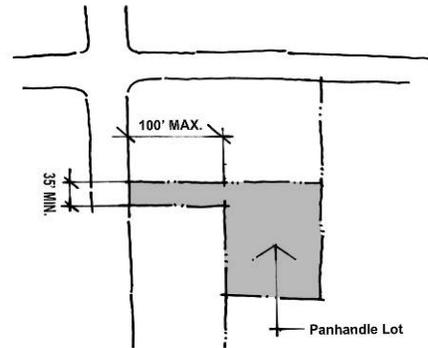


Figure 81. Panhandle Lots

§5.6.2. Blocks

A. Layout

1. Blocks shall be laid out with special consideration given to the type of land use proposed within the block.
2. Block length shall not exceed 1,500 feet.
3. Blocks width shall be sufficient to provide for two tiers of lots of appropriate depth, except where otherwise required to separate residential development from through traffic.

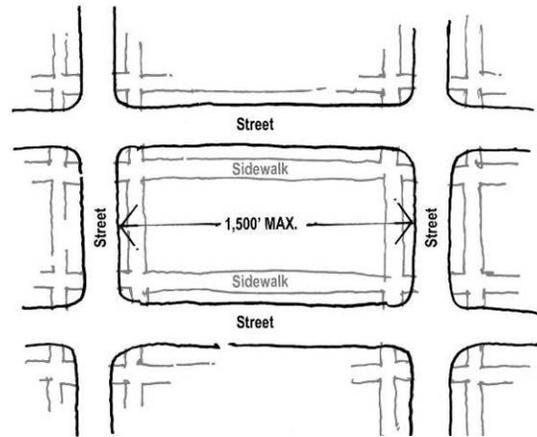


Figure 82. Blocks

B. Pedestrian Connection

1. A pedestrian connection not less than ten feet in width may be required near the center and entirely across any block in excess of 900 feet in length to provide adequate access to schools, shopping centers, churches, or transportation facilities.
2. A pedestrian connection through a cul-de-sac not less than ten feet in width may be required when the cul-de-sac helps provide adequate access to schools, shopping centers, churches, or transportation facilities.

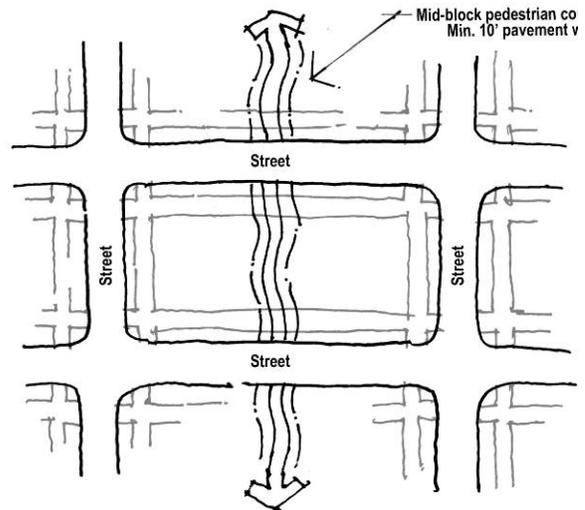


Figure 83. Pedestrian Connection

Water and Sewer

§5.7. Utilities

§5.7.1. Water and Sewer

A. General

1. All lots in subdivisions shall have a suitable source of water supply and sanitary sewage disposal which complies with the regulations of all appropriate agencies.
2. Wherever it is legally possible and practical, as determined by the County after consideration of documented property ownership, topography and supporting cost and engineering data supplied by the subdivider, to connect lots to a public water and/or sewer system, such connections shall be made at subdivider's expense.
3. If the tract in question is proposed to be subdivided with the number of dwelling units indicated in the left hand column of the following table or with a nonresidential use that places a comparable demand on the water or sewer system, then the distance within which the tract must be connected is indicated in the right hand column of that table:

Dwelling Units	Distance (feet)
15-20	300
21-50	600
51-100	1000
101+	1500

4. In determining the number of dwelling units to be proposed for a site, connection to such water or sewer line shall not be deemed legally possible if, after diligent effort by the subdivider:
 - (a) Easement(s) necessary to cross property(s) not owned by the subdivider cannot be obtained; or
 - (b) If the system is maintained by a public agency, the agency cannot provide adequate service at the present time according to State or Federal standards.

B. Water Service Alternatives

If the system provided by the governmental body is not able to provide adequate service at the time the developer is ready for water service or if the system will not be able to provide adequate water service at that time, the subdivider has the following options:

1. Private Wells

- (a) Provide a private system that meets the standards of the governmental water system that can be used until the governmental system is improved to the point of providing adequate service to the homes or buildings of the subdivision.
- (b) Provide improvements to the governmental system at their own expense to improve the water system to the point that it can provide adequate service to the development.

- (c) All property owners, within any subdivision that has been supplied by a private water system or a private well, who desire to hook on to the County water system when it is able to provide adequate service, shall be required to pay all current applicable fees.
- (d) Otherwise, where the subdivider intends to not install water and sewer lines and the distance considerations as herein indicated are met, he shall nonetheless provide the County with cost figures and supporting engineering data for such extensions.

2. Water Alternatives

Where connections to a public water system are not proposed, alternative water supply systems may be considered.

- (a) Potable water shall be provided by either a public water system or a private water system subject to the construction and maintenance standards established in Title 15A of the North Carolina Administrative Code. However, the following statement shall appear in all final plats containing lots which have a community water system serving 15 or more service connections, or a private water supply system:

In approving this plat, Lincoln County does not guarantee the suitability of any community water supply system nor does Lincoln County guarantee that such a system will be suitable for conversion to a public water system owned and operated by a local government or public water authority.

3. Sewer System Alternatives

In cases where connections to a public sewer system are not proposed, alternative sewer disposal systems may be considered.

- (a) Sewer disposal systems using package treatment plants as the main treatment facility shall be designed to accommodate the eventual connection to a public sewer system at the time said connection becomes feasible.
- (b) The subdivider of a subdivision containing a package sewage treatment plant shall adequately demonstrate to the County that the plant, where located, shall satisfactorily serve as a means of waste treatment in a manner which is compatible with the environment and which will not adversely impact any public water supply system.
- (c) Septic tanks (i.e., private sewage disposal systems) may be allowed as a means of sewage disposal in cases where connection to a public sewer system is not feasible. However, the following statement shall appear on all final plats containing lots which are not connected to a public sewer system:

In approving this plat, Lincoln County does not guarantee the suitability of any lot for the placement of a septic tank system.

Stormwater Drainage**§5.7.2. Stormwater Drainage**

The subdivider shall provide stormwater drainage in accordance with §3.8.

§5.7.3. Other Utilities

- A. The applicant shall arrange for the coordinated installation of all other proposed utilities, including gas, electricity, and communications improvements, and shall ensure that site plans, preliminary plats, and final plats clearly show all related easements and roads.
- B. Utilities shall be installed underground unless it is not feasible to do so, as determined by the Director.

§5.8. Public Facilities**§5.8.1. School Sites**

- A. When a subdivision plat is submitted for approval in which, according to the land use or land development plan, a school site should be reserved, the Director shall notify the County Board of Education that the subdivision has been submitted for approval and that under this UDO a school site may be reserved therein.
- B. In reviewing the subdivision and giving approval the Director shall consult the Board of Education in determining the exact size and location of any school site to be reserved therein.
- C. Before the final plat of the subdivision is approved, the Board of Education shall determine whether or not it wishes to have a school site reserved in the subdivision. If the Board of Education does wish to have a school site reserved in the subdivision, the subdivision as finally approved shall reserve a school site of a size and location agreeable to the Board of Education and to the Board of Commissioners. The Board of Education shall then have 18 months, beginning on the date of the final approval of the subdivision, within which to acquire the site. If the Board of Education has not purchased or begun proceedings to acquire the site within 18 months after the subdivision is finally approved, the applicant may proceed to dispose of it in accordance with the subdivision procedure and provisions of this UDO.

§5.8.2. Recreation and Open Space

The minimum recreation and open space requirements for cluster residential subdivisions are set forth in §3.3.2 and for planned development, in §2.4.9.

§5.9. Responsibility for Payment for Installation Costs**§5.9.1. Required Improvements**

Required improvements shall include: roads, road signs and traffic control devices, pedestrian facilities, easements and utilities, water system, sanitary sewer, stormwater drainage, public areas and recreation, open space, and road lighting.

§5.9.2. Payment for Required Improvements

The subdivider or developer is responsible for payment of all costs of materials and installation of required improvements (infrastructure and public improvements needed to serve the development), unless otherwise provided, in accordance with the requirements of this UDO and the County's construction standards. The specific plans and specifications for such improvements shall be approved by the appropriate County, State or Federal agencies.

§5.9.3. Oversized Improvements

The Board of Commissioners may require installation of certain oversized utilities or the extension of utilities to adjacent property(s) when it is in the interest of future development. If the Board of Commissioners requires the installation of improvements in excess of the standards required in this UDO, including all standards adopted by reference, the County shall assure that the cost differential between the oversized improvement required and the standards which would otherwise apply to the proposed subdivision is not incurred by the subdivider. In this manner, the applicant shall not bear the costs of providing oversized improvements required by the County.

§5.10. Guarantee of Improvements**§5.10.1. General**

- A. No final plat will be accepted for review by the Director unless the applicant has complied with §5.10.2 and §5.10.3, below.
- B. If the subdivision is to be phased or developed in sections, the Director shall withhold final plat approval for the most recent phase until improvements in prior stages have been completed or guaranteed. No certificates of occupancy may be issued until all required improvements have been completed in accordance with approved plans.

§5.10.2. Performance Guarantees

- A. In lieu of requiring the completion, installation and dedication of all improvements required by this article prior to final plat approval, Lincoln County may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements. The agreement must specifically provide that full, unrestricted, and complete ownership, access and control of all such improvements will be conveyed to the appropriate government agency upon completion. Once said agreement is signed by both parties and the security required herein is provided, the final plat may be approved by the Board of Commissioners, if all other requirements of this UDO are met.
- B. The subdivider shall provide, for the purpose of obtaining approval of a final plat, a financial guarantee that such improvements will be constructed and installed according to the County's specifications at the applicant's expense. Such guarantee may be in the form of a performance bond, letter of credit, or certified check drawn in favor of the County or cash deposited with the County. Such guarantee shall be in an amount of not less than 125 percent of the estimated cost of the construction of the required improvements. The form of the guarantee and the amount shall be subject

Reserved

to the approval of the Board of Commissioners. Performance guarantees shall run for a minimum period of one year upon written approval of the Board of Commissioners.

- C. If cash or other instrument is deposited in escrow with a financial institution as herein provided, or if a bond, letter of credit or other obligation is provided as a financial guarantee, the subdivider shall then file with the Board of Commissioners an agreement between the financial institution and himself guaranteeing the following:
1. That said escrow account shall be held in trust until released by the Board of Commissioners and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and
 2. That in case of a failure on the part of the subdivider to construct and install said improvements required by the County specifications, the financial institution shall release the amount needed to complete the improvements as determined by an engineer's estimate and as approved by the County. Said funds shall be released immediately to the County up to the balance of the escrow account. Additionally, if the subdivider has failed to pay contractors and subcontractors for work already performed as to the construction and installation of the improvements, and if (1) said contractors or subcontractors have filed valid lien claims, or (2) said contractors or subcontractors have the ability to file lien claims as provided by the North Carolina General Statutes, then the financial institution shall release sufficient funds to pay in full those lien claims or potential lien claims, up to the balance remaining in the escrow account or other financial instrument.

§5.10.3. Reserved

§5.10.4. Inspection and Acceptance

- A. Whether the required improvements are completed prior to or following approval of the final plat, the applicant shall grant to the County and its assignees authority to inspect all construction of the required improvements, and moreover, shall advise the County at least two days in advance of beginning work on any of the various improvements. However, such right of inspection shall not constitute duty to inspect, nor shall it guarantee final acceptance by the County of any required improvements.
- B. If improvements are guaranteed by a bond or cash deposit, failure by the applicant to perform the work to the County's standards shall free the County, at the discretion of the Board of Commissioners, to liquidate the bond or cash deposit, in order to finance the necessary repairs. This provision shall extend through the one-year warranty period. The County will provide the applicant with a written notice of its intent to carry out this provision at least two weeks prior to such liquidations, and shall also provide the applicant during this period a hearing at a regularly scheduled meeting of the Board of Commissioners.
- C. The County's final acceptance of required improvements in the event of their construction following final plat approval shall be evidenced by a

written letter from the Director as specifically authorized by the Board of Commissioners.

- D. The Director may require that a pre-qualified engineer be hired by the applicant to perform the required inspections, or to review all or part of the plans prepared by the applicant's engineer and verify the work done by the contractor meets all approved plans. The cost of the inspection shall be paid for by the applicant. Engineers selected to complete the required inspections shall be selected from a list of engineers established and approved by the Board of Commissioners on a biennial basis. Other engineers may be used with the advance written approval of the Board of Commissioners.

§5.11. Homeowners Associations

§5.11.1. Establishment

- A. If a homeowners association or similar legal entity is to be responsible for the maintenance and control of recreation and open space, recreational facilities, or other common areas and facilities associated with a subdivision, it must be established so that it has clear legal authority to maintain and exercise control over the common areas and facilities, including the power to compel contributions from subdivision residents to cover their proportionate share of the costs associated with the maintenance of the common areas and facilities.
- B. Such association or similar legal entity must be established before any dwelling unit or lot in the subdivision is sold or any building in the subdivision occupied.

§5.11.2. Documentation

- A. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors.
- B. If the association will be responsible for maintaining any common open space, buffers, stormwater facilities, or roads, the covenants shall include the following language or language of similar effect approved by the County Attorney:
 - If at any time the association fails to maintain any external open space, buffer, stormwater facility or road, the County shall have the right but not the obligation to complete required maintenance, to charge the costs of such maintenance to the homeowners' association, and, if not paid, collect such cost from the members as assessments by the association. This assessment shall not be subject to general limitations imposed on assessments by the association, such as those limiting the total amount of an assessment, limiting annual increases in assessments and/or requiring membership votes on specific assessments.
- C. Documents providing for the establishment of a homeowners association or similar legal entity in accordance with this section must be submitted to, and approved by, the Director and the County Attorney before any plat for the development is recorded.

Documentation

- D. The Director's review is limited to ensuring that the homeowners association or similar legal entity is established so that it has clear legal authority to maintain and exercise control over the common areas and facilities, including the power to compel contributions from subdivision residents to cover their proportionate shares of the costs associated with the maintenance of the common areas and facilities. The purpose of the County Attorney's review is to ensure that the County has all necessary authority to remedy a default in the maintenance obligations of the association and to recover the costs of such remedy from the association or its members.